

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
AUGUST 12, 2009**

**CALL TO
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Gordon Cross, George Culpepper Jr., Frank DeKort, Marc Pitman, Mike Mower, Jim Heim and Jeff Larsen. Randy Toavs was absent. Dianna Broadie, Alex Hogle and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were approximately 30 people in the audience.

**APPROVAL OF
MINUTES**

DeKort moved and Hickey-AuClaire seconded to approve the 7/8/09 minutes. The motion passed by quorum.

**PUBLIC
COMMENT
(not related to
agenda items)**

None.

**PRELIMINARY
PLAT/
KAUFFMAN
ESTATES
(FPP 09-04)**

A request by Estate of Aldine Kauffman/Loren Charles Kauffman for Preliminary Plat approval of Kauffman Estates, a six (6) lot single-family residential subdivision on 31.74 acres. Lots in the subdivision are proposed to have individual water and septic systems. The property is located at 1224 Lake Blaine Road.

STAFF REPORT

Dianna Broadie reviewed Staff Report FPP 09-04 for the Board.

**BOARD
QUESTIONS**

Larsen commented there were a couple of typos that needed to be corrected. He read those for staff and Broadie stated she would correct them.

**APPLICANT
PRESENTATION**

Mike Fraser, Fraser Management Consulting, represented the applicant. He gave a brief history of the property and explained they wanted to split this 30 acre parcel into six (6) parcels so their children can each have five (5) acres. They support the staff report and the fact this would be in character with the area. The property hasn't been aggressively farmed for a number of years. The conditions are reasonable and they felt they could work out a solution for the concerns of the Creston Fire Department.

BOARD QUESTIONS	None.
AGENCY COMMENTS	None.
PUBLIC COMMENT	None.
APPLICANT REBUTTAL	None.
STAFF REBUTTAL	None.
BOARD DISCUSSION	<p>Culpepper asked how much bear activity goes in and out of that area.</p> <p>Broadie responded that the comment from the agency for that area stated it would be just transient use.</p> <p>Culpepper asked about solid waste pickup and would the residents maintain regular or bear proof solid waste containers.</p> <p>Mona Charles, 1420 Lake Blaine Road, is a resident in the area. She stated they do have some bear but most people do not have bear proof containers as they don't have a bear problem.</p>
MAIN MOTION TO ADOPT F.O.F.	DeKort made a motion seconded by Pitman to adopt Staff Report FPP 09-04 as findings-of-fact.
BOARD DISCUSSION	None.
ROLL CALL TO ADOPT F.O.F.	On a roll call vote the motion passed unanimously.
MAIN MOTION TO RECOMMEND APPROVAL (FPP 09-04)	Culpepper made a motion seconded by Heim to adopt Staff Report FPP 09-04 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
RECOMMEND
APPROVAL
(FPP 09-04)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Cross commented there had been some correspondence between Pitman and the rural fire chief regarding the level of commitment for volunteers. At some point it really will become a problem for the county.

Pitman said he was concerned about getting to a point where the volunteer fire departments reached saturation. They were having problems keeping volunteers. He wondered if it was something the board wanted to approach sometime in the future.

The board discussed the issue further.

**TOURIS/SNEED
ZONE CHANGE
(FZC 09-03)**

A Zone Change Request in the Bigfork Zoning District by Michael D. & Patricia A. Touris and William L. Sneed III from SAG-5 (Suburban Agricultural) to I-1 (Light Industrial). The property is located off Montana Highway 83

STAFF REPORT

Alex Hogle reviewed Staff Report FZC 09-03 for the Board.

**BOARD
QUESTIONS**

Culpepper brought up a comment made by the Bigfork Land Use Advisory Committee (BLUAC) regarding the petition signed by many people who did not reside within the Bigfork Zoning District. He recalled during the update of the Bigfork Neighborhood Plan there being a comment stating all Flathead County residents pay taxes that support the Bigfork community. The question would be how many of those people don't live in Montana and pay taxes in Flathead County. He stated if he were Mr. Sneed he would have gone to every single Flathead County taxpayer on the property payroll to get their signatures because those residents were paying for the services in Bigfork. He didn't see why that comment had to be a finding.

Hogle said he couldn't answer for why BLUAC adopts the findings they do. He said they felt strongly about it.

Larsen stated the applicants asked for I-1 zoning and it appears the conclusion was that it does meet the 12 criteria.

Hogle said if he read through the actual recommendation he would find staff recommended approval for that zone. Staff strongly recommended consideration of I-1H zoning.

**APPLICANT
PRESENTATION**

Erica Wirtala, Sands Surveying, represented the applicants. She spoke of the previous submittal about a year and a half ago that was denied by the county commissioners. Because of that denial, the applicants had to wait a year before they could reapply. During the interim, the Bigfork Neighborhood Plan was approved by the planning board and went on to the commissioners. Once it went into a 30 day comment period the applicants asked if the commissioners would consider changing the master plan to designate the applicants properties as industrial; which they did as allowed by state law statutes. She spoke of attending the BLUAC meeting where the committee made three (3) findings-of-fact which are before the planning board tonight. She stated BLUAC felt strongly that only 37 of the signatures represented people who were in the Bigfork Zoning District. Her applicant felt strongly that was included with their application because through their entire process they only had one (1) letter in opposition and the only other people opposed to the project were members of BLUAC. She spoke about the BLUAC meeting and public comment, the two (2) existing commercial businesses having been there for 17 years and the history of the businesses on either side being designated commercial. That created an unusable lot in the middle. The applicant (Mr. Touris) ended up putting a building on the site prior to being zoned commercial, but in her opinion that represented a true description of what was going to be on the property. The building is vacant at this time, is not a retail operation but rather will be a plumbing supply warehouse. Mr. Sneed's business is a large machinery rental place. Staff reviewed the application as I-1 zoning which was the applicant's intent. However, staff prefers and recommended I-1H. She asked the board to be mindful when making their recommendation to the county commissioners. She spoke to the applicants recently who stated they did not want to change mid-stream as far as a designation. The lots in I-1 are 7500 square feet which would require public water and sewer. That would be a significant extension from where the lines are now. The rental building meets the setback for I-1H zoning but the applicant would like to move forward with I-1 zoning.

**BOARD
QUESTIONS**

Culpepper asked about changing the land use designation during commissioners public comment period. He wondered if her or her clients had come before the planning board for that same request.

Wirtala said no; it was at the advice of a BLUAC member saying to just go to the commissioners. They had been to a few of the Bigfork Steering Committee workshops and were told they would not consider the change. They had been in the public process for quite some time and thought what was on the ground should have been acknowledged in the Bigfork Neighborhood Plan. They felt if they had come before the planning board they might have been given the same type of answer.

Culpepper said in his opinion that was a problem. The members of the planning board sit there on their own volunteer time and send forward the recommendations they felt was best for the community. Personally he felt it was a disservice to the board members for the applicants to go around the system and directly to the commissioners when the board should be part of that process. He thought people should be cognizant of the fact the planning board was there for a reason. Statutorily they have to make recommendations on these matters. He stated she may be surprised someday when she comes before the planning board; she just may get her wish. As they all know, the planning board does not have the final say, the commissioners do and they can overturn whatever the planning board might do. He asked in the event the board recommends I-1H, would her client accept that.

Wirtala responded her clients would have a couple of weeks to think about that before it goes before the commissioners.

Cross asked if her clients objected to I-1H because of design criteria and permitted uses, which are very specific.

Wirtala stated her clients wanted it reviewed as I-1. She said she couldn't answer for them. She sees the similarities with both of them and it meets the intent of everything the client stated he wanted to do.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Shelley Gonzales, 4747 Foothill Road, represented BLUAC. She wanted to comment on the three (3) additional findings of fact

BLUAC added to the report. She spoke about the frustration BLUAC had with the process when the land use map was changed. She agreed with Culpepper about the need for public disclosure and public meetings. She commented that no current BLUAC member advised them to not do a land use plan amendment. She spoke of a comment made by Wirtala regarding a commissioner advising them that a land use plan map amendment would not work due to the fact the Bigfork Neighborhood Plan was under revision. She said that was not true because during the time the neighborhood plan was under revision, they approved two (2) land use changes to the map as well as the overlying zoning that went with those properties. She stated BLUAC recommended (5-2) I-1H zoning as it best serves this area. She talked about the land uses in the vicinity and highway traffic and said I-1 zoning is very dense and very intense in usage which just does not fit with the surrounding nature of the property. The area has a very high water table not currently served by Bigfork Water and Sewer. I-1H has one (1) acre lot requirements which the applicant has. They also comply with the setbacks. She felt I-1H was a win-win situation for the applicant and the community of Bigfork. It's lower intensity and lower density on a two (2) lane highway with no turnouts is much better than the high density request the applicant has made. BLUAC really appreciated the time and effort that staff put into thinking about what would be in the best interest of Bigfork and followed more closely with the Bigfork Neighborhood Plan.

Charles Gough, 71 Bay Harbor, member of BLUAC. He wanted to follow up on a comment made by a board member regarding the two (2) uses in I-1 zoning as oppose to I-1H zoning. One of the uses is an auto salvage yard. He stated he had no idea what the five (5) acre tract could be used for over time because there would be several acres left that could be used or changed to something else through subdivision. He couldn't think of a worse use being that close to a resort type town. That was a major point at the BLUAC meeting.

**APPLICANT
REBUTTAL**

None

**STAFF
REBUTTAL**

None.

**BOARD
QUESTIONS**

Culpepper asked what the permitted uses and conditional uses were for light industrial highway (I-1H). He commented that staff recommended I-1H and it should be included in the staff report as such.

Hogle said it was in the report but he tried to stay on track for reviewing what the application was requesting. Contrary to focusing on the uses in I-1H and I-1 it was more about the intent and the definition of both of those districts. Regarding the neighborhood plan, there is a statement that says I-1 and I-1H are examples of zoning for areas designated as light industrial depending on the proximity to a major highway. The difference is the intent in the definition of those districts with I-1H tending to mitigate typical adverse impacts that people often refer to as unregulated growth, commercial sprawl, things of that nature.

**MAIN MOTION
TO ADOPT
F.O.F.
(FZC 09-03)**

Pitman made a motion seconded by Hickey-AuClaire to adopt staff report FZC 09-03 as findings-of-fact.

**BOARD
DISCUSSION**

Culpepper asked if BLUAC recommendations were included in the staff report and adopted with the motion.

Cross said those recommendations would be inserted under the BLUAC update in the staff report. The board wasn't necessarily saying they agree with them but being inserted in the update is a fair representation of what BLUAC did.

**ROLL CALL TO
ADOPT F.O.F.**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
RECOMMEND
APPROVAL (As
Amended)**

Pitman made a motion seconded by Larsen to adopt Staff Report FZC 09-03 and recommend approval of the I-1H zoning designation to the Board of County Commissioners.

**SECONDARY
MOTION
Amend Zoning**

Pitman made a motion seconded by DeKort to amend the application to reflect I-1H (Light Industrial-Highway) zoning in lieu of the I-1 (Light Industrial) zoning.

**BOARD
DISCUSSION**

Heim stated the applicant didn't ask for I-1H, they asked for I-1.

Cross said in the past staff has advised the board they could

change the request to something they would consider more appropriate.

Hickey-AuClaire asked if they would then have to request a change to the future land use map to reflect the change.

Cross said the land use designations are more general.

Larsen agreed with Heim saying the application is for I-1 and it was not appropriate to change the application even though he agreed with public comment and felt I1-H would be more appropriate.

Grieve read from the zoning regulations, Section 2.08, to clarify the ability to change the designation.

Heim concurs with public comment regarding a wrecking yard being close to the highway. He would support I-1H.

Cross spoke of setbacks within I-1H zoning. There are additional design standards regarding access, building designs and landscaping. The biggest difference, in his opinion, was the minimum lot size from 7500 feet to an acre which he felt was more appropriate in the area.

Culpepper was concerned about BLUAC questioning the petition signatures. He felt they had a right as Flathead County citizens. The board passed the Bigfork Neighborhood Plan and he concurs with the public stating the I-1H would better comply with the goals and policies of that plan. He felt the applicants could still perform the functions that they choose with the I-1H zoning designation.

Larsen stated what would make him want to go with I-1H zoning is the acreage size. He agreed with the I-1H being the right designation for the area.

ROLL CALL
Amend Zoning

On a roll call vote the motion passed unanimously.

BOARD
DISCUSSION

Culpepper commented that he hoped the applicant would support the change to I-1H zoning just as the board and BLUAC were recommending.

Mower stated he sat through the last review of this application. He said nothing had changed. The applicant made an ill advised purchase and then was arrogant with BLUAC and the board. He reiterated nothing had changed except they had an end run by the commission which is their prerogative. There isn't a single material change on this application from last time and he wouldn't support it.

**ROLL CALL
RECOMMEND
APPROVAL AS
AMENDED
(FZC 09-03)**

On a roll call vote the motion passed 7-1 with Mower dissenting

**PRELIMINARY
PLAT/
RIVERPARK OF
WHITEFISH
(FPP 08-12)**

A request by AVKO LLC for Preliminary Plat approval of Riverpark of Whitefish, a fifteen (15) lot single-family residential subdivision on 66.488 acres. Lots in the subdivision are proposed to have public water and individual septic systems. The Flathead County Planning Board held a public hearing on the subdivision request on September 10, 2008. Subsequent to the Board's recommendation for denial this office received a written request for a "mid-course correction". Revisions to the preliminary plat include: a reduction in the number of lots from 22 to 15; the use of "No Build Zones" to minimize impacts to the natural environment and wildlife; additional groundwater monitoring; and an amended conceptual stormwater management plan that would manage stormwater runoff on each lot and in roadside swales in a manner that no stormwater will directly enter State surface water. The property is located approximately seven miles northwest of Whitefish along the west side of Highway 93.

STAFF REPORT

Alex Hogle reviewed Staff Report FPP 08-12 for the Board.

**BOARD
QUESTIONS**

Cross asked if Hogle could briefly review the additional groundwater work and outline the additions to the storm water plan.

Hogle stated section eight (8) of the application is the ground water monitoring results the board was provided copies of. He spoke of the original plat not having results for monitoring as it had not occurred. He pointed out the new sites for ground water monitoring which was accompanied by legitimate log results. All the holes remained dry during the checks; there was no ground water within eight (8) feet of the surface. Storm water

management changes included a wildlife pond. He spoke of the applicant obtaining permits applicable to amend the water feature to enhance the attractiveness of the area as a homeowner's park, attract wildlife and be an improvement to the area. The current plan did not direct water into the pond. The swales are there to accommodate the volumes required and determined by storm water calculations. The road is designed with swales to capture any runoff from the road. It appears the storm water management plan is adequate and compliant with DEQ who would review the plan if the application is approved.

Hogle wanted to make a comment regarding a phone call he had received from Fish, Wildlife and Parks (FWP) acknowledging there were eagle nests in the area. The agent indicated that FWP had seen a decline in activity in the nests. He wanted to make sure the board read his letter and noted that since he wrote the letter in the spring, this season there had been noted eagle activity in the nests.

Culpepper referenced condition #23 and asked if bear activity was heavy in the area.

Hogle said he didn't know if bear activity was heavy but FWP indicated that bear do utilize the area.

Culpepper stated that bear proof containers should be mentioned in the report.

Hogle said there had been direction from the county, some from the planning board and some from the commission and a significant amount of input from surveyors that specific notes on plats are becoming too overly used for such matters. Especially such matters that staff would not have any real mechanism to monitor after the approval process. The trend has been what the board has in front of them in the staff report. The board could certainly change that if they felt strongly about it.

Culpepper had a huge problem with the fact certain people had a problem with what the board recommends promoting public safety and he thought maybe staff could recommend to FWP to require bear proof containers. He asked about the fire systems and sprinklers being required. He thought the board should take that out of the staff report.

Hogle said no; the conditions are based on findings

acknowledging the agency comments. The board would not find a condition requiring sprinklers.

DeKort asked staff to define a no build zone.

Hogle said what was intended by the 'no build zone' was that there would not be any structures located within the 'no build zone'. In terms of a pathway or agricultural use, those would still be considered reasonable uses.

DeKort read finding-of-fact #8 and said undisturbed to him meant no activity.

Hogle said when he used the term undisturbed he meant free of structures. The property has been utilized for agriculture for quite some time so it is not technically undisturbed. What he meant by the statement was free of the placement of structures.

Cross pointed out the same language in the draft covenants.

Larsen asked about condition #13 and wondered if staff had a mechanism to require the storm water information to be submitted with the application.

Hogle said it was a standard condition and mostly educational for staff. It was also to make sure the applicant was aware what would be required by law. The county sanitarian, Glen Gray, felt it was a reasonable request based on the non-degradation data in the file. He believed the proposal for sanitation could be reasonably met. He also supported the community water system. In addition to his comment, Emily Gillespie of the Montana State Department of Environmental Quality stated the water supply in terms of quality and quantity appeared to be reasonable and supported the proposal.

APPLICANT PRESENTATION

Eric Mulcahy, Sands Surveying, represented the applicant. He spoke of the history of the application and the public input being negative. They took the public comment seriously and addressed the three main issues. The first was the density. They did reduce the density by about 30 percent. The other issue was kind of all related to water quality as far as the river and the number of lots on the river. They reduced the number of lots on the river because of those issues. Another issue was the groundwater monitoring. They dug and monitored new test holes for a whole season and all of the wells on the site showed

no groundwater. They were still proposing level II treatment systems for the septic systems, trying to get a higher level of removal of nutrients. This was not required but done voluntarily by the applicant. He spoke of the no build zone essentially requiring setbacks from streams and riparian areas. The 'no build zones' are primarily for construction of buildings but they intend to include no herbicides or pesticides to have it remain in a rough state. He also spoke of the floodplain that was delineated on the property and stated they had hired an engineer to do a detailed study of flooding on the property. As far as the development and fire safety they have no problem with the condition as written. However, they would like a third option of working with the Whitefish Fire Department for sprinkling and request the board allow them to work with the fire marshal to provide a level of safety. As far as the comments on bear proof containers, they have no problem with that. Generally those containers would be stored indoors and would be taken out on a day for pick up and be taken back in at night. Perhaps the planning board could work with the refuse haulers in regards to pick up. The developers in general do not have a problem with a requirement of bear proof containers as long as the contract haulers can work with that. They are fine with all of the conditions staff has presented.

BOARD QUESTIONS

Cross asked if sprinklers would be in lieu of the other things.

Mulcahy said that is correct. In a wildfire situation, the Stillwater River was right there and overall through that farm country that was not the biggest concern. Whitefish Fire Department was more concerned with a structure fire and response time. Sprinkling addresses the fire immediately and allows the department time to get there.

Culpepper stated if they want to work with the fire department they have the right to do so, but building codes are not allowed to go into the subdivision review process. The county does not have a building department but the applicant can certainly work with the fire marshal in Whitefish. They do not need the county to tell them to do that.

Mulcahy said the county would not be requiring it but giving them the option to do that to meet the suppression needs. His understanding was that it was not the local jurisdiction responsible for monitoring and checking the sprinkling systems but rather a contract through the manufacturer.

Culpepper spoke of the antifreeze in the systems that could leak if they fail because of cold weather environment. He felt it was the wrong path to be putting that into subdivision review.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Bobbi Hall, 4295 Highway 93 West, spoke about being here when the subdivision application came through in September 2008. She read a statement she had prepared about her feelings regarding development in the valley. She also read from a booklet regarding living with wildlife and said there were bear abundant in her area. She presented a petition to the board with signatures of residents who oppose the development of this proposal. She gave her opinion of what would be more in line with the area regarding density. She thanked her support group in trying to preserve the Flathead Valley.

Karlene Khor, 229 7th Street West, Kalispell, spoke of the wildlife in the area and the state and federal guidelines regarding eagles. It is extremely important that we not ignore the fact there are eagle nests in the area. We really have to be mindful of not putting rubber stamps on things; we have guidelines that we should follow. She felt there was a feeling in Flathead Valley of less government. When you see areas such as this that are not zoned, what she felt was these were collections of neighborhoods that were less government folk. Obviously they have defined their neighborhood and it is zoned; just not in the county books. This particular subdivision does not fit that neighborhood. The area is not a subdivision with 15 homes having less than 5 acre lots. They've zoned it by the way they've purchased the property. She spoke of the weather being cold this past spring and the developer being lucky because of that. Usually there is water there.

Tom Perkins, 7655 Farm to Market Road, showed photos of the water in the area. He owns 42 acres directly across from the subdivision on the Stillwater river. He opposed the subdivision. He spoke of the high water in the area and the high density being one of the main issues. It's out of character for the area and the existing development. He listed his concerns regarding density, high water table, emergency response time and the proposal being a burden to taxpayers. He also spoke about the impact to water quality being compromised. He said his property had been negatively impacted from another subdivision in the area with

regard to water runoff. He also spoke of other subdivisions being empty and urged the board to carefully consider their decision. He handed out a petition signed by large land owners in the area who were opposed to the subdivision. He was concerned about the water runoff when the snow melts and there only being one entrance/exit into the subdivision. He felt this proposal would be a major impact to the whole area.

Pam Rozell, 857 Highland Loop, owns Potters Field Lodge and Potters Field Ranch. They use Potters Field Lodge for staff housing and for all of their livestock. She spoke of the feces in the area due to the many animals in the area and wondered if there would be buffers for privacy. There are thousands of gophers and gopher holes and she was concerned about the safety of horses and riders. She was also concerned about traffic, emergency services response times and storm water runoff. She hoped the board would take their legitimate concerns into consideration when making their decision.

David Russell, 6594 Farm to Market, spoke about the Stillwater River changing course over time. He also spoke of digging into clay and not being surprised the groundwater monitoring did not show any signs of water at eight (8) feet.

Jeff Ulsamer, 8700 Highway 93 North, runs Dog Sled Adventures. He was concerned about the way the county is changing and how we can't get it back. The people are against it because they love it here. He commented they don't want a bunch of outsiders complaining about the horse poop and the bear getting in their trash. One of his main concerns, being a volunteer fire fighter, was traffic on Highway 93. He spoke of the volunteers being able to respond just as quickly as the Whitefish Fire Department. He was not against development if it was done in the right way. Higher density needs to be closer to the city. Once it's changed it will never be the same.

Chris Jolly, 6505 Farm to Market Road was opposed to the development due to the density. She felt it should be closer to Whitefish or Kalispell. The density was not appropriate to their neighborhood and 10 acre parcels seemed to be more in line. The intent was there as far as zoning in the neighborhood. People that buy property in rural areas should respect that it is a rural area and not try to make it dense.

Vickie Hubble, 4796 Highway 93 West, spoke of when agriculture was timber and of the bear in the area. She also spoke of the floodwater in the area. She was worried about crime and theft with such a development. She commented about wildlife in the area.

Sherri Sadino, 202 Spring Prairie Road, appreciated both sides. She spoke of the value of the land and acreages of the parcels. She addressed children and the possibility of adding a school bus with the traffic that is already out there. She had concerns about the sizes of the parcels and whether they have enough room for septic systems. She was also concerned about the history of the floodwaters in the area and the fact response times would be slower with emergency services. She stated she wanted to keep the quality of the area.

Sasha Montagu, 7240 Farm to Market Road, spoke of mountain lions in the area. He commended the developer for being progressive but felt strongly the density and the impacts were too much for the area.

David Fischlowitz, 263 South Reid Road, is certified with the National Association of Homebuilders, as a certified 'green professional'. He stated all of the sites on the river would be considered sensitive sites. The other sites would be questionable just because of their agricultural capacity. He agreed with previous speakers and felt this property should be closer to five (5) to seven (7) homes on the parcel.

Stephanie Weaver, 4297 Highway 93 West, spoke last September in opposition. She had not changed her mind although she acknowledged the developer had made concessions. She agreed with previous speakers regarding the fact that high density does not belong in the area. She stated there was abundant wildlife but hadn't seen elk since they started development out there and said the eagles had been disturbed. She said she couldn't even imagine the complaints they would get from 15 families lodged between two (2) properties that were highly agricultural. The traffic has increased and to place that many more families in this rural agricultural area would increase traffic that much more. She supports all the previous speakers and spoke of emailing Governor Schweitzer. She read her letter she had sent to him. His office sent a response saying they would let him know about the subdivision which was close to some property he owns in the area.

Don North spoke of the section of highway, where the proposal is, being extremely dangerous. He also spoke about bear and eagles in the area and the impact to the horse business.

Amy Jacobs, 7365 Farm to Market Road, agreed with previous speakers and wanted to comment about the Stillwater River, the soils, bald eagles and wildlife corridors. She gave a little history about the Stillwater River and the reason it was listed as impaired. She also spoke of the dam and how fragile it was. She spoke of soil samples and the lack of vegetation as well as the eagles in the area. Wildfire hazards were also a concern of hers. She pointed out on the map where there was a major elk wildlife corridor on the property and said she was concerned about dogs disturbing the wildlife. Highway 93 is a dangerous highway. She stated that she doesn't oppose subdivision but strongly recommended a 10 acre minimum which was what the people want in the area to retain the character. She would also recommend the open space be expanded to include the lots along the top of the slope.

Judy Auswitz, 6505 Farm to Market Road, said there were some admirable aspects to the proposal. She stated this subdivision would be an example of how the neighborhood would change greatly. There was absolutely no way to assure the homeowners would abide by any covenants. She didn't want to limit someone's ability to do what they want with their land but she felt it was really important also to respect the impacts to the neighborhood and the wildlife. She respectfully requested the board limit the density for a lesser impact.

Richard Conway, 7225 Farm to Market Road, spoke of response times for emergency vehicles. His major concern was sloughing of homes on the river. By building a subdivision in this area, and he expected families would live there, he was concerned about children's safety along the river. He told a story about having to dig a hole to bury a cat and how the hole kept filling up with the wet dirt. He had to hurry up and dig and then throw the cat in and let the dirt cover it up on its own. He spoke of herbicides and noxious weeds in the area and also a mountain lion that killed a deer in his yard.

APPLICANT REBUTTAL

Mulcahy addressed the floodplain issue and some of the questions raised by the public. He passed out a photo of the area from 1997 showing the property not having flooded and stated the flood study was fairly accurate. He spoke of the

homes that were built right on the edge of the river having sloughed off and stated they were proposing the setbacks so there would be no homes or building sites on the river. He felt they had addressed a lot of the issues that were brought up.

Rudy Koestner, the developer, wanted to address a few comments that were brought up. He pointed out that the eagles nest is more than 500 yards away not 300 yards away. He spoke of the agency representatives who visited the property and his compliance with their requests and concerns. He had not seen any decrease in wildlife in the area. Another concern of the neighbors was groundwater in the area. Their monitoring didn't begin until April due to the snow levels and he wanted to dispute the fact they had a light winter. Anything that had to do with work on the pond had nothing to do with the river. They had not changed the course of the river or the flooding that would occur from the seasonal pond, they had enhanced the natural waterway by taking it and allowing it to actually store more water during an event. He worked with the conservation district closely and they used his property to view prior events that occurred on the river. He spoke of a pamphlet handed out at the September meeting regarding phosphate and nutrient loading into our waterways. He said the pollutants do not come from household septic systems but rather from agricultural waste and by-product; including fertilizers, chemicals and poop. He was unclear what self zoning was. On both sides of his property he had commercial ventures. Across the street was a 66,000 square foot manufacturing plant. He did not consider those to be traditional uses of property. He takes due diligence extremely seriously. He does his homework to get the job done and works with the appropriate authorities to make sure things are done correctly. He commented that along the way if he were to discover something was not appropriate then his neighbors would have been protected. He said he had seen things in the neighborhood that disturbed him and gave a few examples. He wondered if too much emotion takes place and the logic is thrown out the window. He stated that in the past he made comments about Twin Bridges Road and water runoff into the river and he reiterated those comments. He stood behind everything he submitted.

**STAFF
REBUTTAL**

Hogle wanted to clarify the differences between groundwater and floodplain being two entirely different topics. Emergency response time was a common factor in all subdivisions in Flathead County and there was a real questionable ability to

access our rural areas and respond in a timely manner. Staff requested comments from the different agencies, including the sheriff's office, and usually gets a standard response from many of those. He addressed the criteria used to review all subdivisions in Flathead County and in the state of Montana. The criteria are not created by Flathead County, the planning board, the commission or the planning staff of Flathead County. It is established in State law. There was not a single one of those criteria that addressed impacts to aesthetics or character. One of the comments about the area being self-zoned he found interesting; the September meeting had approximately 15-20 public comments that were very emotional and very sincere. Since that meeting he was not aware of one individual from that meeting or anybody else from the Stillwater area who ever contacted the planning office to inquire about the process for establishing a neighborhood plan or establishing zoning. If the area is indeed considered special and subject to specific density guidelines, the mechanism to establish criteria for that was in zoning. This area was not zoned.

Cross answered a question regarding covenants and Homeowners Associations as well as the question of minimum lot sizes for a septic.

**MAIN MOTION
TO ADOPT
F.O.F.**

Pitman made a motion seconded by Hickey-AuClaire to adopt Staff Report FPP 08-12 as findings-of-fact.

**BOARD
DISCUSSION**

Hickey-AuClaire asked if the pond was complete.

Hogle said it was but he wasn't sure of the exact date the work had been completed. When he went to post signs on the property recently he noted it had been completed and reseeded and had new growth.

Koestner said they finished last year but had a little bit more reseeding in the spring. They finished all the major work at the end of the season last year.

**ROLL CALL TO
ADOPT F.O.F.**

On a roll call vote the motion passed unanimously.

**MOTION TO
RECOMMEND
DENIAL
(FPP 08-12)**

Hickey-AuClaire made a motion seconded by Heim to adopt Staff Report FPP 08-12 and recommend **denial** to the Board of County Commissioners.

**BOARD
DISCUSSION**

Hickey-AuClaire was concerned about the density because it was out of character for the area. Looking at the map of the area there were very few lots that were less than three (3) acres. She was also concerned about the eagles in the area and wanted clarification from the county about that issue as it seemed to keep coming up consistently.

Heim agreed with Hogle's comments and referenced the seven (7) elements of public vision taken from the growth policy. He didn't feel this subdivision was in compliance with those seven (7) elements but most of the opposition comments were. However, the property is not zoned and although the subdivision was not in sync with the growth policy vision he didn't feel it was good enough to vote against the proposal.

Larsen stated he wrote down 21 valid concerns from the public comment. He said the way he decided how to vote on a particular proposal was by listening to all the public's concerns and then looked at the health, safety and general welfare of requirements by state law. The way the board addressed those concerns was with conditions. Every subdivision was going to have impacts. He read from his list and went through the conditions in the staff report that addressed those points. The board then has to ask themselves if the conditions mitigate the health, safety and general welfare requirements. In looking at the growth policy, chapter 10, this subdivision doesn't meet the definition of high density. The board had to base their decision, on whether they vote for or against this project, on whether the conditions met the health, safety and general welfare requirements. He understood the public had valid concerns and there was a lot of emotion but the board had clear direction on what to base their decisions on.

Culpepper spoke about protecting views, transportation, maintaining the identity of rural communities, and properly managing and protecting the natural environment. He agreed with public comments stating it was a bad place for a subdivision like this, but he realizes the property is unzoned. They have to follow the law. They have to differentiate between emotions and where it falls under the law.

Pitman commented he was discouraged by the fact they had gone through this once before. He had hoped the neighbors would have approached the county regarding zoning or initiating a neighborhood plan, but they had not. If they had at least approached the county it would have been a lot easier for him to say no. But nobody approached the county; nobody was active enough to take that on. He spoke about Twin Bridges Road and the river sloughing. He believed this proposal was far enough back for that not to happen. He felt the number of children was overrated by the comments and some of those impacts were overstated. It appeared to him that in general it was a 10 acre lot area.

Mower stated it was his second time also. He had based his vote on unresolved engineering issues. He thought the developer came back with a fairly reliable argument regarding those concerns. He would be adamantly opposed to a subdivision with this density if it was just him, but the board has to follow state law. He didn't think, based on density which is the fundamental issue, the board could deny the proposal. He felt this was the strongest argument since he's been on the board, for either neighborhood plans or zoning. If in fact there was a strong feeling amongst the neighbors, he would strongly suggest, whether this goes forward or not, that the neighbors get together and make a decision whether or not they want the character of the neighborhood to continue to change. One thing was for sure, unzoned property in this area will change. If they want to maintain the character they need to get together and figure out how to do that. He could see no reason to deny it.

DeKort commented he hadn't changed his mind for the same reasons as the last time it came before the board. One statement from the developer that came to him at the last meeting was that it was not going to be cost effective if he did much more for these guys. He felt what the developer did was plastic surgery but thought it needed major surgery. He also thought the developer should at least make an attempt to comply with some of the principles of the growth policy. Whether it's the law or not, it is certainly a guiding document and the board doesn't have anything else to go by.

Cross said it was a very troubling subdivision. He thought the big problem last time was density but it was augmented by the concerns regarding groundwater and storm water runoff so the board didn't have to face the issue of density. The board was

obligated by statute to view proposals for public health, safety and welfare. He felt this was one of the most insensitive subdivisions he had seen in a long time. To him, the proposal was really injurious to the welfare of the people of this county. If people can bring forward these subdivisions that are so insensitive and so dense and get them approved because they complied with groundwater requirements, to him the obligation to protect the welfare of the public is such that he was going to vote against it. The subdivision regulations had been followed but he didn't think it was in the best interest of the public welfare to approve this subdivision.

Larsen said if the board was going to deny the proposal they needed to have valid findings that supported that. He questioned referencing the growth policy because by statute the growth policy was not a regulatory document.

Culpepper stated he had three reasons for denial because they violate state law.

**ROLL CALL TO
RECOMMEND
DENIAL
(FPP 08-12)**

On a roll call vote the motion passed 5-3 with Larsen, Mower and Pitman dissenting.

**MOTION TO RE-
OPEN F.O.F**

Culpepper made a motion seconded by DeKort to re-open the Findings-of-Fact.

**ROLL CALL TO
RE-OPEN F.O.F**

On a roll call vote the motion passed 5-3 with Pitman, Mower and Larsen dissenting.

**SUBSIDIARY
MOTION
(Amend F.O.F. #3)**

Culpepper made a motion seconded by DeKort to amend Finding-of-Fact #3 by removing 'include requested requirements for Automatic Fire Suppressions for all residences' and strike 'Requiring building code based Automatic Fire Suppression for all residences is contrary to state law and is inappropriate to require pursuant to 76-3-504(1)(e) MCA'.

MOTION WITHDRAWN

DISCUSSION

Staff asked for clarification as to why they were changing the findings. The board voted to deny the proposal.

Cross said they were going back and revisiting the findings.

Grieve said he would like to verbalize 'point of order' for the record. The decision of the board is based on findings-of-fact. You find facts and make a decision based on those facts. To make a decision and then retroactively re-opening findings is troublesome.

Cross said the board had been advised by planning staff in the past it was permissible to go back and re-do the findings.

Larsen said it was important to let the applicants and the public know the reasons for the denial.

BOARD DISCUSSION

Cross stated it was in the letter from the Whitefish Fire Department saying the applicant should sprinkle the buildings. He wondered why they would want to take it out.

Culpepper said he hoped to have it taken out of the entire document because it didn't need to be in there. Just because there was a letter from the fire marshal doesn't mean the county had to agree with it.

Cross said he wasn't saying they agreed with it, staff was just acknowledging the fact it was there.

SUBSIDIARY MOTION (Add F.O.F. #20)

Culpepper made a motion seconded by Mower to add Finding-of-Fact # 20 to read: This subdivision is outside of the Northern Continental Divide ecosystem recovery zone but within occupied grizzly bear habitat and adjacent to important linkage areas for movement and migration. Therefore, grizzly bear sanitation requirements shall be implemented with bear resistant garbage containers.

MOTION WITHDRAWN

BOARD DISCUSSION

Mower said they already knew it was bear country and all they would need was a condition that requires bear proof containers.

Culpepper said he would like to make it a condition that bear proof containers shall be required.

**SUBSIDIARY
MOTION**
(Add F.O.F. #20)

Cross made a motion seconded by Hickey-AuClaire to add Finding-of-Fact # 20 to read: The density of the development is out of character with the rural nature of the area.

**BOARD
DISCUSSION**

Mower said he didn't disagree that it was completely out of character with the neighborhood but just because it was out of character with the neighborhood didn't necessarily mean it jeopardized the health, safety and welfare of the public.

Hickey-AuClaire thought that combined with the ambulance and fire and all that could be a public concern.

Mower said he didn't think they could link the two. He said it was absolutely correct to say it was out of character with the neighborhood but to link that with the health safety issue, he didn't think they could do that.

Cross said he wasn't thinking the health and safety, he was looking at the welfare.

Mower said he didn't think they could do that.

Cross said he wanted to state the finding but not link it to anything.

ROLL CALL
(Add F.O.F. #20)

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Mower commented he didn't think the board had found anything tangible they could use to deny the proposal. He didn't like it but couldn't find any reason to deny it.

Cross said he understood what he was saying. He didn't agree with it. That is why it goes to the commissioners and they may very well overturn it. It's probably likely in this case.

Mower said it was very likely and he didn't feel the board was doing the job they were supposed to do.

Cross asked the board if they wanted to revisit the conditions. Often what happens is the commissioners would approve it and if they want to change any conditions they needed to do it at this time.

Grieve wanted to call 'point of order'.

Cross said he knew what he was going to say and they heard it before.

**SUBSIDIARY
MOTION**

*(Add language to
condition #11c)*

Culpepper made a motion seconded by Pitman to add a sentence to condition #11c to read: and bear proof containers shall be utilized.

ROLL CALL

*(Add language to
condition #11c)*

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Cross pointed out to staff that the road users' agreement was not in sync with the subdivision regulations and stated why. He asked Mulcahy to take a look at the one in the appendix of the subdivision regulations and see if the applicant would be willing to change.

Pitman said if they were going to include drainage structures that weren't along the roads it should be included in the maintenance agreement.

**SUBSIDIARY
MOTION**

*(Amend condition
#7)*

Pitman made a motion seconded by Hickey-AuClaire to amend condition #7 to add: Road Users' *and Drainage* agreement...

ROLL CALL

*(Amend condition
#7)*

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Cross spoke to the public stating the board would recommend denial to the Board of County Commissioners and the public could find out through the planning office and the commissioner's office when the commissioners would consider the application. He reiterated what others had said that if they really want to get control they have to do something about zoning out there or this will happen again and again. The board stuck their neck out and chances are they will get them lopped off by the commission because they are not exactly on solid legal ground. That's what would continue to happen because it's nice property out there and people are going to continue to develop out there.

Members of the public asked how to start the process.

Cross said to contact the planning office and they could try to do

a neighborhood plan or go right to zoning.

A member of the public asked if they were to try to initiate zoning would it still be too late to stop this particular subdivision.

Cross said yes it would be as this particular proposal had already been going through the review process.

Mower said just for the neighbors, most neighborhood plans have been initiated or precipitated by an event the neighbors didn't like, such as the changing of the character of your neighborhood. In lieu of zoning it's the only protection you have and that's available to you in this county that gives you some measure of control about how it develops. He encouraged the neighbors to get together.

A member of the public clarified they are zoned on the other side of the river.

**MOTION TO
TABLE FZTA
09-01**

Culpepper made a motion seconded by Larsen to table FZTA 09-01 until September 9, 2009.

Motion passed by quorum.

OLD BUSINESS

Cross spoke about Citizens For a Better Flathead requesting copies of all emails sent between board members regarding a workshop that had been held. He wanted the board members to know that all emails regarding discussion of board business was public record and should always be copied to the planning office for public record.

Culpepper stated the board members are subject to that law.

**COMMITTEE
REPORTS**

Hickey-Au Claire said Subcommittee 'A' had received a request from Flathead Lakers asking to do a presentation regarding critical water resources in Flathead County during one of the board's next scheduled public meetings. She asked if the board would be interested in something like that.

Cross asked if she felt there was value in that.

Hickey-AuClaire said she had not met with the group but planning staff had seen the presentation. The information the Flathead Lakers had gathered as well as the maps were public

and if the board wanted to adopt any of those maps into the water resource maps the committee was working on, then the full board would have already had them presented to them.

Mower stated when a special interest group wanted to make a presentation to the board in the past, they felt it was inappropriate. The Lakers are a special interest group and unless you have point/counter-point by somebody else, it's not appropriate for special interest groups to do that.

Grieve stated we could do a legal notice or an ad in the paper calling for any group that would like to present any data they had to the Flathead County Planning Board was welcome to do so. He explained the group had received some grant money to analyze some data in preparation for the DPM. The Basin Commission worked with the biological station and the Lakers to generate these maps and analyze the data. Staff saw the presentation and felt it was worth taking a look at.

The board and staff discussed the next meeting's agenda and upcoming committee meetings.

NEW BUSINESS

Cross stated the board needed to schedule public workshops for the Parks and Recreation Master Plan and the Lakeside Neighborhood Plan.

Culpepper said he had a concern with the planning board holding a workshop on the Lakeside Neighborhood Plan when it was in litigation.

Mower asked if it had been served.

Larsen said it had.

Culpepper stated with the amount of controversy it had and until the issues had been resolved this board should not go down that path until the county attorney or the court says otherwise.

Cross said once a lawsuit has been filed they shouldn't have to cease and desist but Culpepper was probably right. They should ask the county attorney before proceeding.

Larsen said his wife was the one who found out they didn't notify 1200 people and there were a lot of problems with the plan. He was willing to participate if Jon Smith, county attorney, were

willing to answer some questions about the legality of it. He can't participate knowing all the things he does and all the problems with it.

Mower asked isn't the purpose of a workshop to try to understand what they were doing.

Larsen said the process was what bothered him so much. There are about 2400 people in the district and they made a decision to send out about half of them, only people who live there not those who don't live there. He had a concern with that because they didn't have a chance to be on the committee to write any of the plan. Then they had a whole bunch of meetings that were not noticed and were at people's houses and offices of people. That created a real problem to him because we have constitutional rights to participate in those meetings and rights to observe all of those meetings and we don't know what was done at those meetings. Had those original 1200 people that weren't included been included, the plan wouldn't be the same plan it was today because they would have had a different committee working on it. It's the issues of open meetings and public participation. He was willing to come to a workshop and ask the county attorney some questions; he wanted to see how Jon Smith answered all that.

Cross clarified what Larsen was asking for was not necessarily holding a workshop about the plan but rather just asking Jon Smith about the process.

Mower said if what Larsen was saying was true, maybe they should just start over.

Larsen said that's what they told them in the very beginning.

Culpepper said out of everything that happened, the biggest issue that sticks out like a sore thumb was the private yahoo site and said votes were taken by that yahoo group without the public being involved. The planner involved sent a letter to the county attorney stating that three (3) or four (4) votes had been taken on that yahoo website. That alone is a violation of state law.

Mower said if it's that clear cut the county should go back to the organizing group, we are saying it takes three, and start the process over. They would probably use 95% of what they have

already done but just start it from scratch.

Cross said it's a revision and not a new neighborhood plan. In the growth policy there is a section that deals with revisions. It's a fairly easy process.

Heim said it's his neighborhood too and it might have gotten off the ground wrong but it certainly has had public airing for months and months. It certainly hasn't been secret for a long, long time.

Grieve wondered if Jon Smith would be comfortable and be able to come since there was a pending lawsuit.

Mower said the thing that was ludicrous here was first there was a lawsuit, and if you say let's start the process over what does that do to the lawsuit. This whole thing seems to be a tempest in a teapot. If the answer is start it over then start it over.

Cross commented that a lawsuit could delay it longer than starting over. They still have a neighborhood plan that would stay in place until this one was resolved.

Culpepper said his only concern was with the protection of this board.

Cross explained how it got to the point of asking the board to hold workshops. He felt it would make sense to ask for clarification and get an update.

Mower said the reality was that if people want to weigh in they can still weigh in if they choose to. They felt like they were left out but they can come to workshops and public hearings at this point.

Cross told staff to give the sense of this discussion to Jon Smith as to whether the board should be holding workshops where there is a pending lawsuit and ask if he would be willing to meet with the board to discuss questions they had. Then when they get answers they can determine whether or not they can schedule workshops or if they are going to schedule workshops.

Grieve asked for clarification.

Cross said Larsen doesn't want to participate in a workshop on

the plan until he's had some questions answered about the legality of the plan by Jon Smith. The board has some questions about the process by which the plan was created.

Grieve asked if Jon Smith won't come and give answers because of the lawsuit would Larsen then not participate.

Larsen said he would think about it. People don't realize how important the open meeting statutes are. You can make the statement that people can participate later but the statutes require and the constitution says you get to participate in everything.

Mower commented if it's as simplistic as that then the answer should be simple, start over. If it's really that cut and dried, which he has no reason to doubt, Jon Smith should say to the planning office that they should tell the neighborhood plan committee to start over.

Larsen wants to ask Jon Smith that question. He has the statute and the constitution and he wants to ask the county attorney.

Mower asked why he just doesn't go to the county attorney's office and ask Jon Smith.

Cross asked about the Parks & Recreation Master Plan.

Grieve said it had been through their documented public process and went before the parks board who has adopted it. This was an effort to bring it before the planning board and have it adopted as part of the Flathead County Growth Policy.

Mower said if they already adopted it that's shutting the door already.

Cross stated for it to be part of the growth policy the planning board has to hold a public hearing and adopt it.

Mower said then shouldn't it come before this board before being adopted by the parks board. The planning board can't change it now.

Cross asked if they could make a presentation of it.

Mower said he assumed nothing had been adopted before they hold a workshop and public hearing.

The board discussed whether or not they should hold a workshop.

DeKort said it's the same with a neighborhood plan, the plan is adopted out there by the neighborhood and then it comes to the planning board and they say they don't like something and change it.

Cross said it was supposed to be adopted as part of the growth policy and that's the only reason they are seeing it.

Grieve said they've done their own public process; they've had public meetings and hired a consultant to write it and conducted surveys.

The board members decided they would read the Parks and Recreation Master Plan and then decide if they want to hold a workshop.

Culpepper wanted to say it's been a privilege and an honor to serve on the board. He appreciated the courtesy and the opportunity to work with the board. He hoped that despite some criticism directed toward him personally, his service on the board was for his own personal responsibility and not those he may have been associated with. He appreciated it and has a better understanding of what the planning board and staff go through. He will miss everyone.

ADJOURNMENT The meeting was adjourned at approximately 11:10 pm. on a motion by DeKort. The next meeting will be held at 6:00 p.m. on October 14, 2009.

Gordon Cross, President

Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 9/9/09